

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

PAUL CASTONGUAY,

Plaintiff,

v.

JEFFREY NEWTON, et al.,

Defendants.

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CASE NO. 8:09CV413

**MEMORANDUM
AND ORDER**

This matter is before the court on Plaintiff's Notice of Appeal. (Filing No. [166](#).) Plaintiff has not paid the appellate filing fee or filed a motion for leave to proceed in forma pauperis. (Filing No. [167](#).) For the reasons discussed below, Plaintiff will not be permitted to appeal unless he pays the appellate filing fee.

On February 10, 2012, the court dismissed Plaintiff's Complaint and entered Judgment against him. (Filing Nos. [154](#) and [155](#).) Thereafter, Plaintiff filed a Notice of Appeal (filing no. [156](#)) and a Motion for Leave to Appeal IFP (filing no. [157](#)). On March 2, 2012, the court denied Plaintiff's IFP Motion pursuant to the three strikes provision of [28 U.S.C. § 1915\(g\)](#) ("§ 1915(g)"). (Filing No. [160](#).)

On March 19, 2012, Plaintiff filed a Motion for Order to Compel. (Filing No. [164](#).) The court denied this Motion and Plaintiff filed a timely Notice of Appeal. (Filing Nos. [165](#) and [166](#).)

Under the provisions of [§ 1915\(g\)](#), a prisoner may not proceed in forma pauperis in a civil action, or appeal a judgment in a civil action, if the prisoner has, on three or more occasions, while incarcerated, brought an action or appeal in federal court that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted. [§ 1915\(g\)](#). An exception is made for prisoners who are under

imminent danger of serious physical injury. Id. The court has determined that Plaintiff brought three cases,¹ while incarcerated, that were dismissed because they failed to state a claim upon which relief could be granted.²

Plaintiff has not shown that these cases state a claim upon which relief may be granted, nor has he shown that he faces any danger of physical injury. Thus, Plaintiff is not entitled to proceed IFP on appeal. Moreover, Plaintiff has not paid the \$455.00 filing fee, and his appeal cannot be processed.

IT IS THEREFORE ORDERED that:

1. The Clerk of the court shall not process the appeal to the Eighth Circuit; and
2. The Clerk of the court is directed to forward a copy of this Memorandum and Order to the Eighth Circuit Court of Appeals.

DATED this 14th day of May, 2012.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge

¹ *Castonguay v. Douglas County Attorney Office*, No. 8:09CV392 (D. Neb.), dismissed on April 9, 2010. (Case No. 8:09CV392, Filing Nos. [11](#) and [12](#).) *Castonguay v. Douglas County Correction Center*, No. 8:09CV225 (D. Neb.), dismissed on November 3, 2009. (Case No. 8:09CV225, Filing Nos. [14](#) and [15](#).) *Castonguay v. State of Nebraska*, No. 8:09CV221 (D. Neb.), dismissed on November 3, 2009. (Case No. 8:09CV221, Filing Nos. [15](#) and [16](#).)

²The court takes judicial notice of the fact that Plaintiff has previously been informed of [§ 1915\(g\)](#)'s requirements. (See Case No. 4:10CV3207, Filing No. [20](#).)

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